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By e-mail
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Subject: ***Comments on Notice of Proposed Rulemaking, RIN 1901-AB21 Loan Guarantees for Projects that Employ Innovative Technologies***

Dear Mr. Borgstrom:

Thank you for the opportunity to provide comments on the proposed rules to be adopted for the program to provide loan guarantees for projects that employ innovative technologies and improve the environment.

According to the Notice of Proposed Rulemaking ("NOPR"), "a principal goal of Title XVII is to encourage commercial use in the United States of new or significantly improved energy-related technologies" with the belief that "accelerated commercial use of energy-related technologies will help sustain economic growth, yield environmental benefits and produce a more stable and secure energy supply and economy for the United States." Several aspects of the proposed rules should be changed to improve the program's ability to meet this objective. In particular, the Department of Energy ("DOE") should avoid placing restrictions on the types of projects eligible in solicitations, consider additional factors in selecting projects for guarantees, and make the guarantee conditions more appropriate for the financial markets. We address these issues in detail in the attached comments. In addition, we support and endorse the comments filed by NEI and other nuclear utilities who spoke at the public meeting on June 15, 2007.

USEC is the sole domestic producer of enriched uranium that is used to make fuel for nuclear power plants. USEC currently uses DOE's gaseous diffusion plant to produce this product. This process is highly power intensive using over 1000MW on an annual average basis. We are currently working to deploy the American Centrifuge Plant in Piketon, Ohio to replace the gaseous diffusion technology that is over 50 years old with advanced gas centrifuge technology. This new technology will allow USEC to reduce its power usage by over 95%, reducing emissions of carbon dioxide by approximately 10 million tons annually. We submitted our pre-application last December as an efficient end-use technology, although we would also qualify as an advanced nuclear energy facility.

Our project is at an advanced stage of development. We have received a license to construct and operate the American Centrifuge from the U.S. Nuclear Regulatory Commission (NRC) and have already started preliminary construction. We have begun to commit substantial funds for construction efforts and could readily utilize a DOE loan guarantee. As the American Centrifuge project is a "first-of-a-kind" project utilizing classified DOE technology and is without a directly comparable production facility in the private sector, we believe a guarantee may be essential for access to the public capital markets on reasonable terms.

Uranium enrichment is at the front end of the fuel cycle, consequently we believe addressing the American Centrifuge application early in the guarantee program would be supportive not only of a project that clearly fits the intent of the program, but also provide utilities increased confidence that the domestic nuclear fuel cycle will be sufficiently robust to support the decision to invest in new nuclear power plants. As stated in our presentation at the DOE public meeting on June 15, 2007, USEC considers the American Centrifuge to be a perfect candidate for the loan program and it could be a pilot loan guarantee for nuclear facilities.

Please find attached our comments. We look forward to discussing our pre-application with you at your earliest convenience.

Best regards,

John C. Barpoulis

John C. Barpoulis

Attachment

USEC Comments on Notice of Proposed Rulemaking, RIN 1901-AB21
Loan Guarantees for Projects that Employ Innovative Technologies

As provided in the notice of proposed rulemaking ("NOPR"), 72 Fed. Reg. 27471, USEC Inc. offers the following comments on the U.S. Department of Energy's proposed rule for the loan guarantee program authorized by Title XVII of the Energy Policy Act of 2005 ("Title XVII" or the "Act"). These comments are in addition to comments provided by the company at the public meeting held on June 15, 2007

Targeting of Solicitations

We believe the loan guarantee program could be carried out more efficiently, making it more effective in meeting its objectives and reducing the burden on both DOE and the applicant.

1. **Limitation on Loan Guarantees and Solicitation Process, §I and §II.A.** DOE's approach as outlined in §I of the NOPR states that "there is nothing in Title XVII that requires all solicitations implementing that program be open to every project arguably eligible for a guarantee under the statute and that DOE has the ability to tailor specific solicitations to certain types of projects, based on programmatic objectives, loan guarantee authority that is available and the availability of funds to implement the program". In section II.A of the NOPR, DOE's proposed rule further attempts to define what qualifies as "new or significantly improved", "general use" and "commercial marketplace" to limit the number of loans to be provided to projects meeting the objective of Title XVII. We believe DOE is imposing restrictions that are beyond the intent of Title XVII or of Congress and will make the program less effective in meeting its objective of encouraging commercial use in the U.S. of new or significantly improved energy-related technologies. Title XVII authorizes the Secretary of Energy to make loan guarantees for projects that "avoid, reduce, or sequester air pollutants or anthropogenic emissions of greenhouse gases; and employ new or significantly improved technologies as compared to commercial technologies in service in the United States at the time the guarantee is issued. There is nothing in Title XVII that says loan guarantees should not be available to every qualified project. Title XVII does not create or suggest subcategories or restrictions on the types of eligible projects. In fact, Section 1703(b), 42 USC §16513, states that "Projects from the following categories shall be eligible for a guarantee under this section…". DOE is similarly imposing unnecessary restrictions on its own authority in the proposed allocation of guarantee authority in its appropriations request.

   In 2006, DOE received 143 applications for about $27 billion in loan guarantees. To date, the limitations on loan guarantee amounts contained in the FY 2007 Continuing Resolution and the FY 2008 President's budget fall far short of the dollar amount requested by interested parties. We believe that the GAO opinion of April 20, 2007 provides a resolution to this issue, and we recommend that DOE reflect the GAO opinion in the final regulations.

The solicitation process described in the proposed regulations appears modeled after the processes typically used by DOE in funding research and development projects. This approach works well for discretionary activities, where the research community can fashion proposals in response to DOE policy and budget priorities. The loan guarantee program, by comparison, supports commercial projects. While these projects deploy innovative technologies, the underlying need for, and timing of these projects are determined in the marketplace and not by DOE policy.

We believe DOE's approach fails to carry out the intent of Title XVII and will limit the effectiveness of the program to meet the statutory objectives. Different technologies will mature at differing times. Projects must secure the necessary financing when they are ready for deployment and not based on an arbitrary schedule. By unnecessarily limiting solicitations to a few categories of eligible projects DOE will be unable to select the best projects available to meet the statutory objectives and could result in the abandonment of significant promising new technologies. We believe having open solicitations to all qualified projects will result in the selection of the best available projects for the loan guarantee program. Based on the information submitted with the application, DOE will be able to make informed decisions as to which projects are ready to be financed, offer the greatest benefit to the nation and provide the best prospects of repayment to determine who should receive loan guarantees. This will allow DOE to efficiently match the supply of guarantees with the demand and will yield the greatest return on the guarantee "investment". The pre-application process demonstrated there were a number of eligible projects using a wide variety of technologies thereby permitting DOE to select the most promising projects and develop a diversified portfolio.

Evaluation Factors

We support the evaluation factors laid out by DOE in §609.7(b); however, we feel that projects qualifying for multiple forms of federal assistance (§609.7(b)(9)) demonstrate the importance of the project to the U.S. and should not be penalized for having those additional forms of government support. As we believe the program should be open to all projects that qualify under Title XVII, we also believe there are additional factors that would further support the guarantee program's success in meeting the Act's objectives. In particular, we recommend including the following additional factors:

1. **Extent to which the proposed project has all necessary regulatory approvals to construct and operate the proposed facility.** Preference should be given to projects that already have received necessary regulatory approvals. This will eliminate the risk of licensing delays and would provide DOE with the assurance that the project meets other statutory and regulatory requirement before committing the U.S. Government's backing for the project. This will also allow the guarantee process to proceed expeditiously and will result in the approved projects under the program having a more immediate impact on the environment and economy.

2. **Extent to which the proposed project helps achieve other DOE programmatic objectives.** Preference should be given to projects that also fulfill other strategic

objectives of the DOE, such as non-proliferation and its Global Nuclear Energy Partnership program ("GNEP"). In this way, DOE can leverage the loan guarantee program and private sponsors to further its established policy objectives.

3. **Extent to which the proposed project creates domestic manufacturing jobs.** Preference should be given to projects that will create a large number of high-paying jobs in the United States. This will provide direct benefits to the U.S. economy in addition to furthering the goal of increasing our overall energy security and independence.

4. **Extent to which the proposed project reduces the amount of energy currently used and avoids, reduces or eliminates air pollutants or man-made sources of greenhouse gases (GHG).** We believe preference should be given to projects based on the total *net* amount of energy saved and the total *net* amount of pollution reduction achieved rather than a percentage of energy savings or pollution reduction. For example, 5% energy savings that equates to 10 MW is preferable to a 50% energy savings that equates to only 1 MW and 5% pollution avoided that eliminates 1 million tons of GHG is preferable to a 50% pollution avoidance that eliminates only 1 thousand tons of GHG. Smaller projects may present useful long-term technology development opportunities, but the impact of projects with significant absolute improvements will be more immediate.

5. **Extent to which the proposed project qualifies under more that one eligible category listed in Title XVII,** §1703.b. Preference should be given to projects that meet two or more of the categories in §1703.b as the project would more efficiently meet DOE's program objectives.

6. **Extent to which DOE has existing involvement with a proposed project.** Preference should be given to projects that DOE has already identified, evaluated and determined support DOE's mission and statutory goal. Such projects typically already have agreements in place that: 1) protect the interests of the United States (for example, by securing the patents and technology) and 2) establish periodic reviews by DOE. This will expedite the loan guarantee process as new agreements (as required by §609.7(b)(11)) will not have to be established and because DOE will already be familiar with the project and technology. Support for such projects will leverage the benefits of past DOE efforts and have a more immediate impact on the economy and environment.

Financial and Process Factors:

We share the concerns of many in regards to several financing and process issues and provide our comment below:

1. **Guarantee Percentage Cover of Project Costs, Pro Rata Syndication and No Pari Passu,** §609.10(d)(3), §609.10(d)(4) and §609.15(k). The combination of providing a loan guarantee for less than 100% of debt together with the provisions prohibiting pro rata syndication and prohibiting pari passu treatment creates a hybrid instrument that cannot be placed in traditional capital markets. As a result, the effectiveness of the loan guarantee program will be seriously compromised. We believe the simplest solution is to

cover 100% of debt, even if that means reducing the overall total percentage of project costs that can be guaranteed. Although we appreciate DOE's movement in this area, raising the coverage from 80% in the original guidelines to 90% in the proposed rule, coverage of any amount less than 100% of the debt will not solve this issue. Furthermore, Title XVII does not require or even suggest that DOE cover less than 100% of debt, except that the loan guarantee provided cannot exceed 80% of project costs. The remaining 20% of project costs that is not subject to the guarantee will still require substantial capital. This capital must come from additional project sponsor equity or another capital market, perhaps from third-party equity or high-yield debt markets; thus, there will inevitably be other project participants evaluating the project economics and risk to whom the guarantee does not apply and whose investment is subordinated to the debt. Most important is to work with financial community to create a structure that fits existing, well-supported financial markets; otherwise the program won't improve the feasibility of raising debt for the projects and will therefore fail to meet its ultimate objectives.

2. **Pro Rata Syndication/No Stripping of the Guaranteed Debt from the Non-Guaranteed Debt** §609.10(d)(4). If the guarantee percentage remains at less than 100%, there is a portion of the debt that is not guaranteed and is not allowed to be sold separate from the guaranteed debt. This requirement does not fit any current financial market. If the guaranteed amount of debt will be less than 100%, then stripping must be allowed for debt to be placed effectively with its appropriate holders. Typically, the guaranteed piece would be sold in the asset-backed securities market and the non-guaranteed piece would be sold into a mezzanine capital market or private equity. Many investors and financial institutions are restricted from investing in debt that is not subject to a government guarantee or prefer to purchase government guaranteed debt for their portfolios. Requiring the inclusion of a non-guaranteed portion will foreclose the ability to access such markets. As a result, there may not be adequate capacity in the financial markets to hold this unwieldy hybrid instrument. Standard practice in federal loan guarantee programs is to allow stripping of guaranteed loans, and it appears that Congress intended that the Title XVII program follow this practice.

3. **No Pari Passu Structure,** §609.15(k). Providing DOE with superiority in any collection of proceeds is unnecessary and will increase the cost of capital to the project. Section 1702(d) of the Act requires only that the debt guaranteed not be subordinated to other financing. The Act does not require it to be superior to other financing. We believe requiring that the guarantor have a superior claim is not required by the Act will result in investors charging a premium as they are essentially buying subordinated debt. More important, requiring this debt to be subordinated further restricts the market of potential providers, increasing the risk that there will not be adequate capacity in the financial markets to support the financing. The best solution would be to allow a pari passu structure whereby DOE and the debt investors share in the collateral securing the project debt. In any case, DOE should not have a superior claim on all of the collateral if only a portion of the debt is guaranteed. Of course the debt, since it is secured, would have a superior claim over the claims of equity participants.

4. **Credit Subsidy Cost:**
    1. Calculation, §609.9(d)(3). The methodology for developing the subsidy cost calculation should be transparent and communicated so interested parties have a chance to comment. Since the goal of the program is to provide guarantees to projects structured in a manner to ensure repayment, we would expect the subsidy cost to be small and commensurate with other federal loan guarantees.
    2. Exclusion from Project Cost, §609.12(c)(7). Subsidy costs and administrative fees should be allowed to be included in project costs and financed over-time as they are with most other Federal loan guarantee programs. There are no restrictions in either the Federal Credit Reform Act or in other OMB guidance on this matter. We believe that it is both prudent and cost effective to have a single consolidated financing package that includes all project costs.
    3. Payment, §609.9(d)(1) and §609.10(c). We believe that DOE should seek appropriations for subsidy costs, since this program is to foster commercial deployment of new and innovative technologies.

5. **Credit rating,** §609.9(f). This section requires applicants to provide a credit rating from a nationally recognized rating agency reflecting the final term sheet without a Federal guarantee. Other than add substantial costs of questionable value to the project, we do not understand the purpose of this requirement. By their nature, credit agencies are not well suited to evaluate technical risk elements especially with new emerging technologies. The purpose of the loan guarantee program is to support innovative projects that are generally not yet capable of accessing traditional capital markets and therefore require a guarantee. We believe that the information required to be included in an application will provide a solid foundation on which DOE can form its own opinion of project and repayment risk. This information includes a report detailing its successes and failures during the pilot and demonstration as laid out in §609.4(c)(2) and/or an independent engineer report as laid out in §609.6(b)(19). Rating agencies generally compare companies or projects of similar nature and compare them to historical data. As these are new and innovative technologies not in general use or in the commercial marketplace there will likely be no comparables for the rating agencies to use to evaluate the projects in this program. A credit evaluation will have limited, if any, utility and will likely favor less innovative technologies thereby reducing the effectiveness of the loan guarantee program. DOE is better suited for evaluating innovative energy technologies that are consistent with its policy objectives.

6. **Minimum Equity Percentage,** §609.7(a)(6), §609.7(b)(7) and §609.10(d)(5). In the NOPR, DOE is soliciting comment on the merits of adopting a minimum equity percentage requirement. Congress required that no more than 80% of total project costs could be guaranteed under the program. Any further requirement is unnecessary. At least some of the remaining financing will inevitably be equity and project sponsors will generally want to own a majority. Certain projects will lend themselves to larger equity contributions than others, as determined by the nature of the project, the type of technology and the expected project economics. DOE will be able to assess the strength of the equity commitments through the information received as part of the application.

Therefore, we believe DOE should retain its discretion in this area and evaluate the overall structure proposed.

7. **Non-recourse,** §609.10(d)(10). Consistent with the statutory language, DOE should clarify that it will require security in only the project assets, contracts and agreements. Companies embarking on a new project should be able to finance the project in a manner that will not require jeopardizing its ability to finance other business lines.

8. **Audit,** §609.17(b). This section outlines DOE's right from time to time to audit any or all items of costs included as Project Costs in statements or certificates submitted to the Secretary or other holders. DOE has proposed that it have the ability to exclude or reduce the amount of any item which is deemed by the Secretary to be unnecessary or excessive or otherwise not to be an item of Project Costs. While DOE needs to be able to assure that the project costs incurred are appropriate, the standard must provide certainty to the project sponsor and other participants. In particular, we are concerned that this requirement could lead to the application of the cost principles of the FAR, which could be extremely cumbersome for a project planned for private financing. We recommend that this provision be changed to provide greater certainty. DOE's audit rights should be limited to verifying the incurred amounts of allowable project costs. The standard of necessity and excessive should not be a factor, as it is too judgmental and could be interpreted as requiring the application of the FAR. If the costs meet the definition as allowable project costs and are allocable to the project then they should qualify for financing under the loan guarantee program.

9. **Applications Process,** §609.3-10. The current process as laid out: solicitation, pre-application, invitation to apply, issuance of DOE term sheet, execution of conditional commitment and final loan guarantee agreement is unnecessarily cumbersome and time consuming. We believe there should be an application process that would be followed by a conditional commitment, and then the final loan guarantee agreement. Companies need to have certainty that DOE will proceed to a final loan guarantee if the company expends the time and effort to satisfy its conditions. We recommend establishing set timeframes, such that project sponsors with projects currently underway can be certain of timing of a response to their application. Schedules are critical, since decisions on the loan guarantee need to be closely coordinated with the closing of the equity commitments and the commercial loan agreements. We believe applications should be accepted throughout the year as projects are ready to seek financing and acted on by DOE in accordance with the time limits to be established.

10. **Project Costs,** §609.12(c).
    1. Exclusion of general and administrative (G&A) expense, §609.12(c)(2). We believe that these direct or allocated costs should be allowed as project costs. It may not be efficient for the project to establish separate legal, procurement, information technology, sales and finance functions to support a project and to the extent such organizations support a project, the project should bear those costs, either directly or indirectly.
    2. Exclusion of compensation to employees and officers, §609.12(c)(4). It is typical for corporations to offer compensation bonuses of stock to

management as performance incentives. To the extent these performance incentives are paid to employees or officers working on the project, these incentives should be included as project costs as the project is benefiting from the increased performance.

3. Exclusion of research, development and demonstration costs, §609.12(c)(5). Since the purpose of the program is to encourage new and innovative technology, we believe that if these costs are directly related to the project that they should be included as project cost and recognized as an equity investment by the project sponsor.
4. Exclusion of expenses incurred after startup, §609.12(c)(8). We believe these costs should be allowed as project costs as these will be cash expenses born by the operations of the project. Most projects are not immediately cash flow positive once they are started. There is generally a ramp-up period during which the project will not be able to sustain itself with cash generated from operations and it will be necessary for these costs to be funded. While these are fairly short-lived, the amount could be large depending on the size of the project. By excluding these from project costs, this is essentially requiring an additional equity investment by the project sponsor. DOE should allow these as project costs and evaluate them at the time it reviews the expected economics of the project. We believe that the transition point is project-specific and should be established case-by-case in the financing and loan guarantee agreements.